No. 15642.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ALBERT DEL GUERCIO, Officer in Charge, Immigration and Naturalization Service, Los Angeles, California,

Appellant,

vs.

BENNIE SEVITT,

Appellee.

APPELLANT'S OPENING BRIEF.

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TOPICAL INDEX

TABLE OF AUTHORITIES CITED

Cases

Statutes

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Statement of Jurisdiction.

Or or about March 24, 1954, appellee was served with a Warrant of Arrest which charged that he was subject to deportation under 8 United States Code §1251(a)(9), as an alien who, after his admission into the United States at Rouses Point, New York, on March 18, 1947, as a temporary visitor for pleasure, failed to comply with the conditions of such status. [T. R. 11, 13.][1]

Subsequent to the arrest, deportation proceedings were conducted during the course of which an additional charge was lodged to the effect that appellee was subject to deportation under 8 United States Code §1251(a)(5), as an alien who had failed to furnish address information as required by the Alien Registration Act (8 United States Code, §1305). [T. R. 11-12.] On or about

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[1]T. R. refers to the Clerk's Transcript of Record.

December 8, 1955, a Special Inquiry Officer determined that appellee was subject to deportation on both grounds and entered an order of deportation accordingly. [T. R. 12.]

An administrative appeal from said decision and order was taken to the Board of Immigration Appeals. (*Ibid.*) Appellee filed a timely application for suspension of deportation under 8 United States Code §1254(a)(1), which was denied by said Board on the ground that appellee was not eligible for such relief. (*Ibid.*) On January 24, 1956, the Board affirmed the decision and order of the Special Inquiry Officer by dismissing the appeal. (*Ibid.*)

A Complaint for Injunction and Declaratory Judgment was filed in the District Court for the Southern District of California at Los Angeles on March 2, 1956. [T. R. 3-8.] Appellant's Answer was filed on April 19, 1956. [T. R. 9-10.] The case was tried on January 21, 1957, by the Honorable William M. Byrne, District Judge, who rendered a decision on March 26, 1957 (reported at 150 Fed. Supp. 56). [T. R. 14-23.] Judgment was entered on April 2, 1957, in favor of appellee. [T. R. 24-29.] Appellant filed a timely notice of appeal on May 31, 1957. [T. R. 29-30.]

The District Court had jurisdiction of the action under 8 United States Code §1329, 5 United States Code §1009, and 28 United States Code §2201, *et seq.*

This Court has jurisdiction of the appeal under 28 United States Code §1291.

Statement of the Case.

The decision and judgment of the District Court determined that the holding by the Board of Immigration Appeals that appellee is deportable under 8 United States Code §1251(a)(5), was based upon reasonable, substantial and probative evidence. Such conclusion, of course, we do not question.

The District Court also determined, however, that the administrative agency should have considered appellee's application for suspension of deportation under 8 United States Code §1254(a)(1). The correctness of this ruling is the only question raised on appeal.

Specification of Errors.

1. The District Court erred in adjudging that appellee may not be deported until his application for suspension of deportation has been considered under 8 United States Code §1254(a)(1). [T. R. 29.]

2. The District Court erred in concluding that the Board of Immigration Appeals erred in refusing to consider appellee's application for suspension under 8 United States Code §1254(a)(1). [T. R. 28.]

3. The District Court erred in deciding that appellee's application for suspension of deportation should have been considered under 8 United States Code §1254(a)(1). [T. R. 21.]

Summary of Argument.

Suspension of deportation is available under the Immigration and Nationality Act of 1952 in 8 United States Code §1254(a)(1), (2), (3), (4), and (5), the applicability of the five paragraphs being dependent upon the grounds of deportation, the time of entry, period of residence within the United States and other factors. Although paragraph (5) specifically applies to the ground of Mr. Sevitt's deportation, such ground is not specifically excluded from the application of the more general provisions of paragraph (1). Thus statutory construction is necessary to resolve the question of which paragraph, if not both, is applicable to appellee.

Our argument is that it was the intent of the 1952 Congress in enacting 8 U. S. C. §1254(a)(5), to severely limit the relief of suspension of deportation for the offenses designated therein, and to effectuate this intention, paragraph (5) should be construed as being the only paragraph of §1254(a) which governs applications for suspension of such offenses. Our argument is based upon the following major points:

1. The offense which renders appellee deportable, a violation of §1305, was not a ground of deportation until passage of the 1952 Act. Under this Act, a violation subjects one to deportation under 8 U. S. C. §1251(a)(5) even though the alien is not convicted for the offense. (8 U. S. C. §1306(b).) Therefore, the 1952 Congress indicated a sternness towards such offenses.

2. A further such indication is the fact that deportations under §1251(a)(5) are specifically included in the suspension provisions of §1254(a)(5) in which the most serious grounds of deportation are enumerated. The suspension relief in paragraph (5) for major violations is much more rigid than for the minor offenses suspendable under paragraphs (1), (2), and (3). Presumably, therefore, Congress would not intend the more liberal relief provisions of paragraph (1) to apply to what it considers a major violation.

3. Moreover, relief under §1254(a)(1) specifically is not available to persons ineligible for such relief under §19(d) of the 1917 Act, as amended. (8 U. S. C. §155(d).) Such previously ineligible offenses are the same major offenses now eligible for suspension under the strict standards of §1254(a)(5). Consequently, the exclusion from paragraph (1) of a class into which appellee specifically is included would seem to show clearly Congressional intention to exclude appellee's class from paragraph (1).

4. Relief under paragraph (1) was intended only for persons eligible therefor under former 8 United States Code, §155(c). Appellee could not have been intended to come within the scope of paragraph (1) since he was not eligible for relief under the former Act, due to the fact that he was not subject to deportation until the 1952 Act.

5. Relief under paragraph (1) was intended to exist only for a limited time, and expires on December 31,

1957. Congress could not have intended appellee to be within the scope of (1), since he is specifically eligible for an unlimited period of relief under paragraph (5) of §1254(a).

6. A normal rule of statutory construction is that provisions specifically treating a certain subject matter control general provisions which also may include that subject matter. Under this rule, only §1254(a)(5), which specifically treats the ground of appellee's deportation, can govern the application for suspension, even though the literal terms of §1254(a)(1) could also so govern.

7. If §1305 offenses are suspendable under paragraph (1), certain absurd results occur which Congress presumably never would have intended. An adequate explanation of these absurdities would require more space than a summary permits, so the details thereof are left to the body of the Argument.

ARGUMENT.

I.

Preliminary Statement.

The question involved in this appeal is one solely of statutory construction.[2] The literal terms both of 8 U. S. C. §1254(a)(1) and of 8 U. S. C. §1254(a)(5) can govern the application of appellee for suspension of deportation. [T. R. 19-20.] The difference to Mr. Sevitt is that he has met the seven year physical presence requirement of paragraph (1) but not the ten year requirement of paragraph (5); thus the Immigration Service can consider the application if (1) is applicable, but cannot if (5) is applicable.

The trial court concluded that Congress intended to give aliens a choice of the five paragraphs of §1254(a) under which to file their applications for suspension, dependent only upon the aliens qualifying under the literal standards of each paragraph. [T. R. 21.] It is our position that Congress intended only paragraph (5) to apply to aliens who, as has Mr. Sevitt, violated the Alien Registration Act. Our argument to a large extent will be based upon *Dessalernos v. Savoretti,* 244 F. 2d 178 (C. A. 5, 1957), decided since the District Court opinion. The *Dessalernos* case is on all fours, and since the Fifth Circuit so keenly analyzed the statutory problem involved herein, we must apologize in advance for adopting so much of that Court's reasoning.

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[2]The pertinent statutes are set forth in the Appendix.

II.

Construction of the Statute Is Necessary.

The trial court rejected arguments based upon statutory construction of §1254(a) on the ground that "the statute is clear and unambiguous." [T. R. 22.] We agree that construction normally should not occur where there is no ambiguity in a statute.

> ". . . the province of construction lies wholly within the domain of ambiguity . . ."
>
> *Hamilton v. Rathbone,* 175 U. S. 414, 421 (1899).

> "The intention of the Congress is to be sought for primarily in the language used, and where this expresses an intention reasonably intelligible and plain it must be accepted without modification by resort to construction or conjecture."
>
> *Thompson v. United States,* 246 U. S. 547, 551 (1918).

> "The principle that a clear and unambiguous statute must be literally construed is long established."
>
> *Miller v. Bank of America,* 166 F. 2d 415, 417 (9 Cir., 1948).

We also agree with the lower court's statement that 8 U. S. C. §1254(a)(1) is plain and clear in its terms. We respectfully submit, however, that a question of whether one portion of a statute is in conflict with another cannot be resolved by confining scrutiny to one such portion. Otherwise, there never would have been the necessity for the familiar rule that "where there is inconsistency between general and special provisions of an act, the latter control."

> *United States v. Mattio,* 17 F. 2d 879 (9 Cir., 1927).

The correct method of determining whether statutory construction of §1254(a) is necessary would require a reading of its paragraph (1) together with paragraph (5); then if no ambiguity is present, construction is unnecessary. Under such a test, the ambiguity of the section is manifest.

The five paragraphs of §1254(a) are mutually exclusive except with respect to grounds of deportability arising under paragraphs (5) and (17) of §1251(a). (*Dessalernos v. Savoretti,* 244 F. 2d, *supra,* p. 183.) Appellee is deportable under §1251(a)(5) to which §1254(a)(5) expressly is applicable. Appellee is also, therefore, "deportable under any law of the United States" within the meaning of §1254(a)(1). The offense which makes him deportable, a violation of 8 United States Code, §1305, in that he failed to provide changes of address as required by the Alien Registration Act, was not a ground of deportation under the pre-1952 law. Thus such offense is not within the express exclusion of §1254(a)(1), namely, appellee "is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the Immigration Act of 1917, as amended."

Consequently, paragraph (5) of §1254(a) is expressly applicable to the ground of appellee's deportation, and paragraph (1) does not expressly exclude such ground. The problem of resolving the two paragraphs with respect to §1251(a)(5) offenses immediately arises: Do both paragraphs apply to such offenses? If only one applies, which one? It is very apparent that §1254(a)(1) does not plainly and unambiguously apply to the aliens in Mr. Sevitt's class when read in conjunction with §1254(a)(5). Therefore, it is necessary to resort to

the principles of construction to determine which paragraph, if not both, Congress intended to be applicable to violations of the Alien Registration Act.

III.

History and Purpose of the 1952 Changes in the Immigration Law.

The 1952 Immigration and Nationality Act completely revised the former provisions of law relating to the Alien Registration Act and to suspension of deportation. Since it was such revision which resulted in the ambiguity this Court is called upon to resolve, it is essential that we discover what changes were made and why. Such an inquiry into legislation history and purpose is proper, as was held in *Acheson v. Fujiko Furusho,* 212 F. 2d 284 (C. A. 9, 1954):

> "In the early case of Smythe v. Fiske, 1874, 90 U. S. 374, 380, 23 L. Ed. 47, it is said, 'Where doubt exists as to the meaning of a statute, * * * [t]he pre-existing law, and the reason and purpose of the new enactment are also considerations of great weight."

The appropriate starting point of inquiry into the legislative history of the 1952 Act is the Alien Registration Act of 1940, found at c. 439, 54 Stat. 670-676. Title I of the Act, dealing with subversive activity, was codified in former 18 United States Code §§9-13. Title II, concerning deportation and suspension of deportation, was codified in 8 United States Code §155(b), (c) and (d). Title III, pertaining to the requirements and procedures of registration, was codified in 8 United States Code §§451-460.

The provisions of Title II and III are what concern Mr. Sevitt. The crucial ground of his order of deportation is his failure to provide the Attorney General with a change of address. [T. R. 15.] Prior to 1952, his duty to do so arose under 8 United States Code §456. The only penalty for failure to comply was set forth in 8 U. S. C. §457(b), which provided a maximum punishment of $100 fine and/or 30 days imprisonment. The 1952 Act sets forth his duty in 8 U. S. C. §1305, and the penalty in §1306(b). Although the duty and penalty provisions were retained in substance, a very striking *addition* to the penalty was made; even though an alien was not convicted of a violation of §1305, the 1952 Act made him subject to deportation for failure to comply unless the alien could prove that his failure was not wilful. It is thus very much an understatement to say that Congress took a more severe view in 1952 of this type of violation.

Inasmuch as *Dessalernos v. Savoretti, supra,* p. 181-184, thoroughly reviews the antecedent history of laws governing the suspension of deportation and the 1952 changes therein, we shall merely summarize the developments in those laws. Suspension of deportation was not available under the pre-1952 law to aliens specified in 8 United States Code §155(d), *i. e.,* anarchists, narcotic offenders, criminals, immoral persons, etc. As to aliens who were eligible for such relief under the old law, the present 8 U. S. C. §1254(a)(1) authorizes the continuance thereof until December 31, 1957, for aliens who had entered prior to June 27, 1950. Section 1254(a)(1) expressly excludes from its application those aliens who were ineligible under the old law.

Section 1254(a)(5) authorizes suspension of deportation to those aliens previously excluded therefrom under the pre-1952 law, but under severe limitations. If the application of §1254(a)(5) had been confined solely to aliens in §155(d), no conflict would exist between §1254(a)(1) and §1254(a)(5), at least with respect to the offense rendering appellee deportable. Instead, Congress enacted additional grounds of deportation in §1251(a)(17) and §1306(b), and specified that suspension of deportation for such offenses would be governed by §1254(a)(5). Consequently, conflict between §1254(a)(1) and §1254(a)(5) arises, because deportation under §1251(a)(17) and §1306(b) are "under any law of the United States" within the meaning of §1254(a)(1), and yet not specifically excluded therefrom because not mentioned, of course, in former §155(d).

IV.
Intent of Congress.

The fundamental principle of statutory construction is to give effect to the intention of the legislature.

> "In every case of statutory interpretation, the aim is to discover the legislative intent."
>
> *Femmer v. City of Juneau,* 97 F. 2d 649, 656 (9 Cir., 1938).

> "We invoke the principle so well stated in Ozawa v. United States, 1922, 260 U. S. 178, 194 . . ., as follows: 'It is the duty of this Court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment

> and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the *purpose* may not fail . . .'"
>
> *Acheson v. Fujiko Furusho,* 212 F. 2d 284, 295 (C. A. 9, 1954).

The history and purpose of the pertinent changes in in the 1952 law already have been seen, and provide such a clear picture of Congressional intention that the solving of the apparent ambiguity in §1254(a) becomes easy.

First, it has been seen that the 1952 Congress made violations of §1305 subject to the drastic penalty of deportation without the necessity of a conviction therefor. Next, this ground of deportation was included in §1254(a)(5) with the most serious such grounds, such as for anarchism, narcotic trafficking, prostitution, and other major criminal activity. These other serious offenses were excluded from the relief of suspension of deportation under the former §155(d). Finally, persons in the former ineligible classes under §155(d) are specifically excluded from relief in §1254(a)(1).

In view of the foregoing, it would seem incredible that Congress would have intended the easy relief available in paragraph (1) to apply to a new class specifically placed with the major offenses, when such major offenses were expressly excluded from paragraph (1) relief.

This conclusion is reinforced by remembering the purpose of paragraph (1) relief, which was to continue suspension of deportation for a limited period of minor offenders eligible for such relief under the former Act, provided their entry occurred before June 27, 1950. Congressional intention to "preserve" such relief for classes eligible therefor prior to the 1952 Act cannot

exist for appellee, since the ground of his deportation did not arise until 1952. Since he is not one of those aliens eligible for relief under the pre-1952 Act, he was not intended by Congress to be eligible under paragraph (1), which merely continues such relief.

Moreover, the cut-off date for relief under paragraph (1) gives a further clue as to the intent of the legislature. Since Congress desired to end suspension of deportation relief on December 31, 1957, to aliens in paragraph (1), obviously such paragraph did not include appellee, for he is eligible for such relief under paragraph (5), which has no time limitation. Thus the specific inclusion of appellee's category in paragraph (5) would seem to manifest Congressional intention to exclude the category from paragraph (1). This is merely another example of the soundness of the familiar principle that a specific provision prevails over a general provision. The Supreme Court, in *MacEvoy v. United States,* 322 U. S. 102, 107 (1944), stated the rule in the following strong language:

> "However inclusive may be the general language of a statute, it 'will not be held to apply to a matter specifically dealt with in another part of the same enactment . . . Specific terms prevail over the general . . .'"

The rule has been followed by this Court on many occasions. (*United States v. Mattio,* 17 F. 2d 879 (9 Cir. 1927); *Karrell v. United States,* 181 F. 2d 981, 986-7 (C. A. 9, 1950); *McLeod v. Nagle,* 48 F. 2d 189 (9 Cir. 1931).) In the *McLeod* case, former §155 was construed. There the contention was that even though the alien was in a class specifically made deportable, he likewise was in the general class of aliens who were excludable under the first, more general, provision of the section,

and his case should be dealt with under the less onerous conditions of the general provision. This Court stated that such an argument did not appeal to it, holding:

> " 'It must be conceded that the appellee is a member of one of the classes excludable by law. * * * But it must likewise be conceded that he also belongs to the special class for which no time limit is fixed, and under a familiar rule of statutory construction with special provision will control over the general one.' * * * Here Congress has expressly excepted aliens convicted of crime prior to their entry into the United States from the general classification of those who are excluded by law. The language is clear, and so to construe it gives each clause of section 19 its due importance * * *"

We submit that the language of §155 interpreted in *McLeod* no more clearly excluded the special class from the general class there than does §1254(a) exclude the special class of paragraph (5) from the general class of paragraph (1). Therefore, the special provision of paragraph (5) should prevail over the general class of paragraph (1).

Of further significance is the mutual exclusivity of the five paragraphs of §1254(a). As noted by the *Dessalernos* opinion, 244 F. 2d, supra, pp. 183-184, the only breakdown in the mutual exclusivity of the section comes if deportations under §1251(a)(5) and (17) are held to come within §1254(a)(1) as well as §1254(a)(5). Under the construction urged by the Government, this overlap does not exist and the entire section is harmonious in that each paragraph is mutually exclusive. By such a construction, each paragraph is given its "due importance" as prescribed by *McLeod*.

V.

The Statute Should Be Construed to Avoid Absurdities.

Another principle of statutory construction which this Court has applied in the past is that enactments should be construed to avoid absurd results.

> "'. . . [S]tatutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion' (Lau Ow Bew v. United States, 144 U. S. 47 . . .)."
>
> *Haff v. Yung Poy,* 68 F. 2d 203 (9 Cir., 1933).

> "We quote from Sorrells v. United States, 1932, 287 U. S. 435 . . . 'Literal interpretation of statutes at the expense of the reason of the law and producing absurd consequences or flagrant injustice has frequently been condemned [citing cases]. * * * 'All laws should receive a sensible construction. *General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence.* It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character.' . . ." (Emphasis added.)
>
> *Acheson v. Fujiko Furusho,* 212 F. 2d 284, 295 (C. A. 9, 1954).

If 8 United States Code §1254(a)(1) governed appellee's application for suspension of deportation, some rather absurd results occur.

A. As *Dessalernos v. Savoretti,* 244 F. 2d, supra, p. 184, pointed out, two aliens could violate 8 U. S. C. §1305 at precisely the same time and place, but the consequences

to them would be entirely different depending solely on the date of entry. For a violation in 1954, as occurred herein, the easier relief provisions of §1254(a)(1) are available to aliens entering before June 27, 1950, but not to those entering the United States after that date. Under some circumstances, there might be a reason behind leniency towards aliens entering earlier—but here there would appear to be none, since this ground of deportation did not arise until 1952.

B. As noted earlier, Congress intended suspension of deportation of aliens within the scope of §1254(a)(1) to cease on December 31, 1957. Yet if both paragraphs (1) and (5) of §1254(a) apply to appellee, this avowed Congressional intention fails because appellee would be eligible for suspension after December 31, 1957, under paragraph (5). Moreover, the relief under paragraph (5) would not be available to appellee until ten years after the commission of his 1954 offense. Thus a very unusual hiatus occurs. For what reason would Congress desire an alien to be eligible for suspension for five years, not eligible for a longer period, and then eligible again? If this be what Congress intended, we can be sure that more explicit language to that effect would have been used.

C. It is also interesting to contrast the residence and moral character requirements of paragraph (1) and (5) of §1254(a) in the light of the "overlap" provisions of §1251(a)(5) and (17). In paragraph (5) of §1254(a), good moral character during a period of ten years residence within the United States following the commission of the act rendering one deportable is required. In paragraph (1), good moral character for a period of seven years residence within the United States prior to

the filing of application for suspension is all that is required. In paragraph (1) is Congress saying that good character may exist despite the commission of an act of deportation during the requisite seven years? Why this difference in language between paragraphs (1) and (5)?

It might be because the grounds of deportation in paragraph (5) are considered so serious that ten years good character after the ground arises is necessary before one is sufficiently "purged of his offense, but such purging is not required for minor offenses. Under this rationale, it would seem that the specific placement of §1251(a)(5) offenses in this category would mean necessarily that the easier provisions of relief in paragraph (1) were not intended to be available for such offenses.

On the other hand, there really may exist no disparity between the wording, when viewed closely. The only grounds of deportation arising after entry into the United States which are suspendable under paragraph (1) (other than the overlap provisions) are those listed in §1251 (a)(9) and (10). A brief reading of these sections in the Appendix will disclose readily that they could involve no lack of good moral character. Thus, if the overlap provisions are considered within paragraph (1), there arises the absurdity that offenses Congress considered heinous enough to place in the most undesirable category, where a "purging" is required, do not even constitute a lack of good character in paragraph (1). If the overlap provisions are said to be controlled exclusively by paragraph (5), however, the incongruity disappears.

In this respect, it should be noted that paragraphs (2) and (4) of §1254(a) specifically apply to grounds of deportation arising at or prior to entry; paragraphs

(3) and (5) specifically apply to grounds of deportation arising subsequent to entry. Paragraphs (2) and (4) require good moral character for a period of time "immediately preceding" the alien's application for suspension, whereas (3) and (5) require residence and good moral character to follow the commission of the act constituting the ground for deportation. Thus when paragraph (1) uses the language that is used in (2) and (4), *i. e.,* that seven years residence must be "immediately preceding the date of such application," it is patently clear that Congress considers paragraph (1) offenses to be those which arise at or prior to entry, as in paragraphs (2) and (4), and not subsequent to entry as in those in paragraphs (3) and (5). Since the overlap grounds for deportation arise subsequent to entry, it must have been Congressional intention to exclude such grounds from paragraph (1) relief.

D. Title 8, United States Code §1254(e), authorizes the relief of voluntary departure in lieu of deportation. The section is somewhat unclear at first reading, but has been administratively construed (*In the Matter of V.,* 6 Immigration and Nationality Decisions 723 1955)), and we believe properly so, as follows: Aliens within the provisions of paragraphs (4)-(7), 11, 12, (14)-(17), or (18) of Section 1251(a) of Title 8 are excluded from relief of voluntary departure unless such aliens satisfy the ten year physical presence and moral character requirements of 8 U. S. C. §1254(a)(4) or (5). Thus, once again Congress demonstrates that it regards the above-enumerated paragraphs of §1251(a) as being more heinous than others and that it has carefully restricted the relief granted aliens within the provisions of such paragraphs.

It is clear that Mr. Sevitt would not be eligible for the relief of voluntary departure, a lesser relief than suspension of deportation, where the alien is allowed to remain in this country, since he cannot satisfy the residence and moral character requirements of §1254(a)(5). However, if he is considered to be eligible for the greater relief of suspension of deportation under §1254(a)(1), the careful statutory restrictions upon relief to aliens in his category breaks down. Once again it seems crystal clear that an absurd result would occur if appellee's application for suspension of deportation can be considered under paragraph (1) of §1254(a). Only if paragraph (5) thereof is held to control exclusively can intelligent, uniform and consistent exercise of Congressional intent take place.

Conclusion.

8 United States Code §1254(a)(5) alone should be held to govern the application of appellee for suspension of deportation. Such a holding would be in accordance with (1) the normal rule of construction concerning specific and general provisions, (2) the clear Congressional intent to severely limit relief to aliens deportable under §1251(a)(5), and (3) with a decision of the Court of Appeals for the Fifth Circuit precisely in point.

Respectfully submitted,

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APPENDIX.

8 United States Code §1254 provides as follows:

"§1254. Suspension of deportation—Adjustment of status for permanent residence; contents

"(a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who—

"(1) applies to the Attorney General within five years after the effective date of this chapter for suspension of deportation; last entered the United States more than two years prior to June 27, 1952; is deportable under any law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the Immigration Act of 1917, as amended; and has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(2) last entered the United States within two years prior to or at any time after June 27, 1952; is deportable under any law of the United States solely for an act committed or status existing prior to or at the time of such entry into the United States and is not within the provisions of paragraph (4) of this subsection; was

possessed of all of the requisite documents at the time of such entry into the United States; has been physically present in the United States for a continuous period of not less than five years immediately preceding his application under this paragraph, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this chapter in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(3) last entered the United States within two years prior to, or at any time after June 27, 1952; is deportable under any law of the United States for an act committed or status acquired subsequent to such entry into the United States and is not within the provisions of paragraph (4) or (5) of this subsection; was possessed of all of the requisite documents at the time of such entry into the United States; has been physically present in the United States for a continuous period of not less than five years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this chapter in deportation issued pursuant to this chapter in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would,

in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

(4) last entered the United States within two years prior to, or at any time after June 27, 1952; is deportable under paragraph (1) of section 1251(a) of this title insofar as it relates to criminals, prostitutes or other immoral persons, subversives, violators of narcotic laws and similar classes or under paragraph (2) of section 1251(a) of this title, as a person who entered the United States without inspection or at a time or place other than as designated by the Attorney General, or without the proper documents and is not within the provisions of paragraph (5) of this subsection; has been physically present in the United States for a continuous period of not less than ten years after such entry and immediately preceding his application under this paragraph and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this chapter in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

(5) is deportable under paragraphs (4)-(7), (11), (12), (14)-(17), or (18) of section 1251(a) of this title for an act committed or status acquired subsequent to such entry into the United States or having last en-

tered the United States within two years prior to, or at any time after June 27, 1952. is deportable under paragraph (2) of section 1251(a) of this title as a person who has remained longer in the United States than the period for which he was admitted; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this chapter in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence.

FULFILLMENT OF REQUIREMENTS OF PARAGRAPHS (1)-(3) OF SUBSECTION (A); REPORT TO CONGRESS

(b) Upon application by any alien who is found by the Attorney General to meet the requirements of paragraphs (1), (2), or (3) of subsection (a) of this section, the Attorney General may in his discretion suspend deportation of such alien. If the deportation of any alien is suspended under the provisions of this subsection, a complete and detailed statement of the facts and pertinent provisions of law in the case shall be reported to the Congress with the reasons for such suspension. Such reports shall be submitted on the first and fifteenth day of each calendar month in which Congress is in session.

If during the session of the Congress at which a case is reported, or, prior to the close of the session of the Congress next following the session at which a case is reported, either the Senate or the House of Representatives passes a resolution stating in substance that it does not favor the suspension of such deportation, the Attorney General shall thereupon deport such alien or authorize the alien's voluntary departure at his own expense under the order of deportation in the manner provided by law. If neither the Senate nor the House of Representatives shall, within the time above specified, pass such a resolution, the Attorney General shall cancel deportation proceedings. The provisions of this subsection relating to the granting of suspension of deportation shall not be applicable to any alien who is a native of any country contiguous to the United States or of any adjacent island, unless he establishes to the satisfaction of the Attorney General that he is ineligible to obtain a nonquota immigrant visa.

FULFILLMENT OF REQUIREMENTS OF PARAGRAPHS (4) OR (5) OF SUBSECTION (A); REPORT TO CONGRESS

(c) Upon application by any alien who is found by the Attorney General to meet the requirements of paragraph (4) or (5) of subsection (a) of this section, the Attorney General may in his discretion suspend deportation of such alien. If the deportation of any alien is suspended under the provisions of this subsection, a complete and detailed statement of the facts and pertinent provisions of law in the case shall be reported to the Congress with the reasons for such suspension. Such reports shall be submitted on the first and fifteenth day of each calendar month in which Congress is in session.

If during the session of the Congress at which a case is reported, or, prior to the close of the session of the Congress next following the session at which a case is reported, the Congress passes a concurrent resolution stating in substance that it favors the suspension of such deportation, the Attorney General shall cancel deportation proceedings. If within the time above specified the Congress does not pass such a concurrent resolution, or if either the Senate or House of Representatives passes a resolution stating in substance that it does not favor the suspension of the deportation of such alien, the Attorney General shall thereupon deport such alien in the manner provided by law.

Record of Cancellation of Deportation

(d) Upon the cancellation of deportation in the case of any alien under this section, the Attorney General shall record the alien's lawful admission for permanent residence as of the date the cancellation of deportation of such alien is made, and the Secretary of State shall, if the alien was classifiable as a quota immigrant at the time of entry and was not charged to the appropriate quota, reduce by one the quota of the quota area to which the alien is chargeable under section 1152 of this title for the fiscal year then current at the time of cancellation or the next following year in which a quota is available. No quota shall be so reduced by more than 50 per centum in any fiscal year.

Voluntary Departure

(e) The Attorney General may, in his discretion, permit any alien under deportation proceedings, other than an alien within the provisions of paragraphs (4)-

(7), (11), (12), (14)-(17), or (18) of section 1251(a) of this title (and also any alien within the purview of such paragraphs if he is also within the provisions of paragraph (4) or (5) of subsection (a) of this section), to depart voluntarily from the United States at his own expense in lieu of deportation if such alien shall establish to the satisfaction of the Attorney General that he is, and has been, a person of good moral character for at least five years immediately preceding his application for voluntary departure under this subsection. June 27, 1952, c. 477, Title II, ch. 5, §244, 66 Stat. 214."

8 United States Code §1251(a)(5) provides as follows:

"§1251. *Deportable aliens—General Classes*

(a) Any alien in the United States (including an crewman) shall, upon the order of the Attorney General, be deported who—

* * * * * * * * *

(5) has failed to comply with the provisions of section 1305 of this title unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful, or has been convicted under section 1306(c) of this title, or under section 36(c) of the Alien Registration Act, 1940, or has been convicted of violating or conspiracy to violate any provision of sections 611-621 of Title 22 or has been convicted under section 1546 of Title 18;"

8 United States Code §1305 provides as follows:

"§1305. *Change of address*

Every alien required to be registered under this subchapter, or who was required to be registered under the Alien Registration Act, 1940, as amended, who is within

the United States on the first day of January following the effective date of this chapter, or on the first day of January of each succeeding year shall, within thirty days following such dates, notify the Attorney General in writing of his current address and furnish such additional information as may by regulations be required by the Attorney General. Any such alien shall likewise notify the Attorney General in writing of each change of address and new address within ten days from the date of such change. Any such alien who is temporarily absent from the United States on the first day of January following the effective date of this chapter, or on the first day of January of any succeeding year shall furnish his current address and other information as required by this section within ten days after his return. Any such alien in the United States in a lawful temporary residence status shall in like manner also notify the Attorney General in writing of his address at the expiration of each three-month period during which he remains in the United States regardless of whether there has been any change of address. In the case of an alien for whom a parent or legal guardian is required to apply for registration, the notice required by this section shall be given by such parent or legal guardian. June 27, 1952, c. 477, Title II, ch. 7, §265, 66 Stat. 225."

8 United States Code §1306 provides as follows:

"§1306. *Penalties—Willful failure to register*

(a) Any alien required to apply for registration and to be fingerprinted in the United States who willfully fails or refuses to make such application or to be fingerprinted, and any parent or legal guardian required to apply for the registration of any alien who willfully

fails or refuses to file application for the registration of such alien shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $1,000 or be imprisoned not more than six months, or both.

Failure to Notify Change of Address

(b) Any alien or any parent or legal guardian in the United States of any alien who fails to give written notice to the Attorney General, as required by section 1305 of this title, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $200 or be imprisoned not more than thirty days, or both. Irrespective of whether an alien is convicted and punished as herein provided, any alien who fails to give written notice to the Attorney General, as required by section 1305 of this title, shall be taken into custody and deported in the manner provided by Part 5 of this subchapter, unless such alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful.

Fraudulent Statements

(c) Any alien or any parent or legal guardian of any alien, who files an application for registration containing statements known by him to be false, or who procures or attempts to procure registration of himself or another person through fraud, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $1,000, or be imprisoned not more than six months, or both; and any alien so convicted shall, upon the warrant of the Attorney General, be taken into custody and be deported in the manner provided in Part 5 of this subchapter.

COUNTERFEITING

(d) Any person who with unlawful intent photographs, prints, or in any other manner makes, or executes, any engraving, photograph, print, or impression in the likeness of any certificate of alien registration or an alien registration receipt card or any colorable imitation thereof, except when and as authorized under such rules and regulations as may be prescribed by the Attorney General, shall upon conviction be fined not to exceed $5,000 or be imprisoned not more than five years, or both. June 27, 1952, c. 477, Title II, ch. 7, §266, 66 Stat. 225."

8 United States Code §155 provided as follows:

"§155. *Deportation of undesirable aliens generally*

(a) At any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this chapter, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; except as hereinafter provided, any alien who, after May 1, 1917, is sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien

to the United States, or who is sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving mortal turpitude, committed at any time after entry; any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who, after being excluded and deported or arrested and deported as a prostitute, or as a procurer, or as having been connected with the business of prostitution or importation for prostitution or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section 138 of this title; any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials, or by land at any place other than one designated as a port of entry for aliens by the Commissioner of Immigration and Naturali-

zation, or at any time not designated by immigration officials, or who enters without inspection, shall, upon the warrant of the Attorney General, be taken into custody and deported. . . .

(b) Any alien of any of the classes specified in this subsection, in addition to aliens who are deportable under other provisions of law, shall, upon warrant of the Attorney General, be taken into custody and deported:

(1) Any alien who, at any time within five years after entry, shall have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

(2) Any alien who, at any time after entry, shall have on more than one occasion, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien or aliens to enter or to try to enter the United States in violation of law.

(3) Any alien who, at any time after entry, shall have been convicted of possessing or carrying in violation of any law any weapon which shoots or is designed to shoot automatically or semiautomatically more than one shot without manual reloading, by a single function of the trigger, or a weapon commonly called a sawed-off shotgun.

(4) Any alien who, at any time within five years after entry, shall have been convicted of violating the provisions of sections 9-13 of Title 18.

(5) Any alien who, at any time after entry, shall have been convicted more than once of violating the provisions of sections 9-13 of Title 18.

No alien who is deportable under the provisions of paragraph (3), (4), or (5) of this subsection shall be deported until the termination of his imprisonment or the entry of an order releasing him on probation or parole.

(c) In the case of any alien (other than one to whom subsection (d) is applicable) who is deportable under any law of the United States and who has proved good moral character for the preceding five years, the Attorney General may (1) permit such alien to depart the United States to any country of his choice at his own expense, in lieu of deportation, or (2) suspend deportation of such alien if not racially inadmissible or ineligible to naturalization in the United States if he finds that such deportation would result in serious economic detriment to a citizen or legally resident alien who is the spouse, parent, or minor child of such deportable alien. . . .

(d) The provisions of subsection (c) shall not be applicable in the case of any alien who is deportable under (1) section 137 of this title; (2) section 175 of Title 21; (3) section 156a of this title; (4) any of the provisions of so much of subsection (a) of this section as relates to criminals, prostitutes, procurers, or other immoral persons, the mentally and physically deficient, anarchists, and similar classes; or (5) subsection (b) of this section. Feb. 5, 1917, c. 29, §19, 39 Stat. 889; Ex. Ord. No. 6166, §14, June 10, 1933; Reorg. Plan No. V, eff. June 14, 1940, 5 Fed. Reg. 2423, 54 Stat. 1238; June 28, 1940, c. 439, Title II, §20, 54 Stat. 671."

8 United States Code §456 provided as follows:

"§456. *Notice of change of address*

"Any alien required to be registered under this chapter who is resident of the United States shall notify the Commissioner in writing of each change of residence and new address within five days from the date of such change. Any other alien required to be registered under this chapter shall notify the Commissioner in writing of his address at the expiration of each three months' period of residence in the United States. In the case of an alien for whom a parent or legal guardian is required to apply for registration, the notices required by this section shall be given by such parent or legal guardian. June 28, 1940, c. 439, Title III, §35, 54 Stat. 675."

8 United States Code §457 provided as follows:

"§457. *Penalties*

(a) Any alien required to apply for registration and to be fingerprinted who willfully fails or refuses to make such application or to be fingerprinted, and any parent or legal guardian required to apply for the registration of any alien who willfully fails or refuses to file application for the registration of such lien shall, upon conviction thereof be fined not to exceed $1,000 or be imprisoned not more than six months, or both.

(b) Any alien, or any parent or legal guardian of any alien, who fails to give written notice to the Commissioner of change of address as required by section 456 of this title shall, upon conviction thereof, be fined not to exceed $100, or be imprisoned not more than thirty days, or both.

(c) Any alien or any parent or legal guardian of any alien, who files an application for registration containing statements known by him to be false, or who procures or attempts to procure registration of himself or another person through fraud, shall, upon conviction thereof, be fined not to exceed $1,000; or be imprisoned not more than six months, or both; and any alien so convicted within five years after entry into the United States shall, upon the warrant of the Attorney General, be taken into custody and be deported in the manner provided in sections 155 and 156 of this title. June 28, 1940, c. 439, Title III, §36, 54 Stat. 675."

8 United States Code §§1251(a)(5), (9) and (10) provide:

"§1251. *Deportable aliens—General classes*

"(a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

* * * * * * * * *

"(5) has failed to comply with the provisions of section 1305 of this title unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful, or has been convicted under section 1306(c) of this title, or under section 36(c) of the Alien Registration Act, 1940, or has been convicted of violating or conspiracy to violate any provision of sections 611-621 of Title 22 or has been convicted under section 1546 of Title 18;

* * * * * * * * *

"(9) was admitted as a nonimmigrant and failed to maintain the nonimmigrant status in which he was ad-

mitted or to which it was changed pursuant to section 1258 of this title, or to comply with the conditions of any such status;

"(10) entered the United States from foreign contiguous territory or adjacent islands, having arrived there on a vessel or aircraft of a nonsignatory transportation company under section 1228(a) of this title and was without the required period of stay in such foreign contiguous territory or adjacent islands following such arrival (other than an alien who is a native-born citizen of any of the countries enumerated in section 1101(a)(27(C) of this title and an alien described in section 1101(a)(27)(B) of this title);"